

competitors are not given clear instructions about seeking Commission enforcement of its bulk rate rules against offending MSOs. As a result, competing MVPDs have been given little practical relief or guidance. The Commission should provide competing MVPDs with clarification on how to enforce the uniform rate requirement; the Commission should also create a specific enforcement mechanism (i.e., complaint procedure) to assure uniformity of rates.

The Commission is the only regulatory body which can provide Liberty and other MVPDs with relief from the anticompetitive effects of cable operator bulk rates. State and municipal agencies generally have no interest, or legislative directive or authority to promote competition against the franchised cable companies and, therefore, cannot be expected to play any meaningful role in resolving the bulk rate issue. In fact, the remedy which Liberty seeks -- eliminating lower priced (though predatory), non-uniform bulk rates -- would be a politically unpopular position for local regulators to support.

B. Program Access.

1. Court TV.

Liberty greatly appreciates the Commission's recent efforts to promote competition in the video marketplace as exemplified by its resolution of the Court TV matter. Specifically, Liberty applauds the Commission's expeditious analysis of Time Warner's request for authorization of its exclusive contract with Court TV. The Commission decision in this proceeding was released

only about a month after all of the relevant filings were ultimately submitted.

However, it is imperative for the Commission to recognize that Liberty exerted significant time, effort and capital to exercise its lawful right to offer Court TV. Indeed, Liberty's efforts to obtain access to Court TV have been ongoing at the Commission for more than eight months, but in actuality have consumed more than two years beginning when program access was first approved and then denied by representatives of Court TV. In December 1993, Liberty filed a program access complaint with the Commission against Court TV. However, the Commission did not consider the complaint because the Cable Services Bureau held it in abeyance pending the Commission's decision with respect to the Time Warner Exclusivity Petition.^{39/} While Liberty is certainly pleased that it and other MVPD competitors will now be able to offer this popular programming, the Commission should understand that competition will only be promoted if the Commission timely and aggressively responds to such anticompetitive practices.

2. WCA Petition.

With respect to horizontally integrated cable operators and program providers, the Commission last year adopted regulations to implement the statutory prohibitions against coerced exclusive programming contracts. However, these regulations, arguably, limit

^{39/} See Complaint of Liberty Cable Company v. Courtroom Television Network, Order, CSR 4242-P, DA 94-397 (adopted March 25, 1994).

the effectiveness of the statute. Specifically, Section 76.1302(a) of the Commission's rules provides that:

Any video programmer aggrieved by conduct that it alleges to constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission. [Emphasis added.] ^{40/}

On December 15, 1993, the Wireless Cable Association International ("WCA") filed a Petition for Partial Reconsideration asking the Commission to amend its rules to also specifically afford standing to file such a complaint to any aggrieved MVPD. In today's video marketplace, it is unlikely that a video programming vendor will risk alienating a cable operator with significant market power by complaining to the Commission. Not only is WCA's proposal logical, but it would certainly lessen the likelihood that a cable operator will engage in coercive and retaliatory practices since a competing MVPD that was a victim of such anticompetitive behavior will not be encumbered with the same commercial inhibitions as a video programmer.

FX provides an excellent example of the problem the WCA Petition is attempting to address. While video programmers are often victims of the anticompetitive practices of cable operators and are provided for in Commission rules, in the case of FX, Fox seems to be a willing conspirator with TCI. In cases where the programmer is cooperating with a cable monopolist, the current Commission regulations provide little relief for either consumers or competing MVPDs, both of which are victims. Competition suffers as a result.

^{40/} 47 C.F.R. § 76.1302(a).

C. Cable Inside Wiring.

The Commission's order in the cable home wiring proceeding^{41/} recognizes that the intent of the Act was to promote competition. Specifically, the order states that the definition of cable home wiring adopted was intended to "give alternate providers adequate access to the cable home wiring so that they may connect the wiring to their systems without disrupting the subscriber's premises".^{42/} However, the Commission's rules were adopted with single family residences in mind and take almost no account of the MDU environment in which Liberty is attempting to compete. Because the definition of home wiring (for MDUs) contained in the Commission's rules^{43/} does not, in many cases, permit alternative providers to connect subscribers to their systems without destroying the subscriber's premises (because the wiring is embedded inside walls), a significant disincentive exists for subscribers to switch to these providers. On April 1, 1993, Liberty filed a Petition for Reconsideration and Clarification of the Home Wiring Order asking the Commission to modify its definition of home wiring and give

^{41/} In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Cable Home Wiring, MM Docket No. 92-260, 71 RR 2d 1214 (1993) ("Home Wiring Order").

^{42/} Id. at ¶ 11-12.

^{43/} According to 47 C.F.R. § 76.5(11) cable home wiring is defined as "[t]he internal wiring contained within the premises of a subscriber which begins at the demarcation point"; according to 47 C.F.R. § 76.5(mm), "[f]or new and existing multiple unit installations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit, but shall not include loop through or other similar series cable wire".

alternate providers like Liberty easier access to inside wiring. Over a year later, the Commission has yet to act.

Liberty is not alone in seeking Commission relief. On July 27, 1993, a Joint Petition for Rulemaking was filed by the United States Telephone Association ("USTA") and others which proposes, among other things, that the Commission adopt rules that give cable subscribers access to cable home wiring regardless of whether a subscriber terminates service.^{44/} If such a rule were adopted, the efforts of cable operators like Time Warner to complicate the disconnection of its service and the hook-up of an alternate provider's service would likely cease.^{45/} Almost a year later, however, the Commission has not resolved USTA's petition.

The longer the Commission fails to act on the above-referenced petitions and to grant the requested relief, the more difficult it will be for competing MVPDs to play a meaningful role in the video marketplace. Thus, it is imperative that these issues be resolved as expeditiously as possible.

D. Video Dialtone.

On January 14, 1994, Liberty began operating as a program provider using New York Telephone's ("NYT") VDT system in New York City. NYT is providing VDT service to a selected group of subscribers pursuant to a technical trial authorized by the

^{44/} In the Matter of Joint Petition for Rulemaking to Establish Rules for Subscriber Access to Cable Home Wiring for the Delivery of Competing and Complimentary Video Services, RM No. 8380 released November 15, 1993.

^{45/} See Section IV (D) herein which discusses Liberty's experience with this type of behavior.

Commission.^{46/} This trial serves 2,500 subscribers in the borough of Manhattan. Liberty is informed and believes that, upon completion of the VDT trial, NYT will offer VDT service on a fully tariffed basis throughout Manhattan. Liberty intends to subscribe to this VDT service once it is tariffed and thereby offer a multichannel video programming service to all of Manhattan.

Significantly, the Commission has yet to authorize a fully tariffed VDT service in any market which, ultimately, will help promote competition in the video marketplace. The processing of most VDT Section 214 Applications appears to have been stalled notwithstanding recent statements made by the Commission that it intended to expedite their processing. Although the Commission is wrestling with numerous, difficult VDT issues including cost allocation and platform capacity, the fact remains that the Commission has failed to encourage the use of VDT technology as an alternative to traditional cable. This is particularly troubling since Liberty, as a potential VDT customer, can use VDT to enhance its ability to compete with the entrenched cable monopolist in New York, not just in MDUs, but all households in the market.

Some argue that because there are so few homes passed by VDT 214 applications currently before the Commission, approval of such applications will make very little difference in the amount of competition that will develop. Liberty disagrees. Liberty knows

^{46/} In the Matter of the Application of New York Telephone for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, to Construct, Operate, Own and Maintain Facilities and Equipment to Test Video Dialtone Service in Portions of New York City, 8 FCC Rcd 4325 (1993).

that certain potential VDT providers have not filed 214 applications because of the perception of delay and inaction at the Commission. Once the Commission demonstrates its willingness and ability to speedily act on these applications, many more will be filed. This will increase the number of homes passed and the level of competition to entrenched cable monopolists. Cable interests have sought vigorously to block Commission approval of pending VDT 214 applications. Cable interests know their monopoly control is threatened by VDT and are doing everything possible to stop it.

VI. Conclusion

The Act is a milestone in the evolution of competition in the video marketplace. One of the principal goals of the Act is to encourage the establishment of a dynamic and competitive marketplace where consumers have access to a multitude of choices of affordable, high-quality video services. Two years after its passage, significant efforts have been exerted to reach this objective, but for the most part, the entrenched cable monopolists continue to dominate the industry and competition has been effectively quashed. If there is ever to be any real competition, the Commission must be more aggressive in promoting the growth of competing MVPDs, more nurturing of their nascent competitive efforts, and more responsive to MVPD's concerns.

The Commission should, as quickly as possible, resolve the issues raised in the various pending cable proceedings specified herein and grant relief which will promote competition. In addition, the Commission, as a general matter, should whenever

confronted with allegations of a MSO engaging in anticompetitive practices, impose on the MSO the burden of demonstrating that the activity does not have an anticompetitive effect on competing MVPDs.^{47/} Thus, the Commission should adopt a presumption in favor of the competing MVPD with the incumbent monopolists having the burden of disproving the claims. With the proper safeguards to ensure that frivolous suits are not brought, this approach would certainly help to promote competition in the video marketplace.

We are at a critical point in the development of the video market. It is imperative that the Commission take an active role in fostering competition, today, to ensure that a competitive marketplace exists tomorrow.

Respectfully submitted,
LIBERTY CABLE COMPANY, INC.

GINSBURG, FELDMAN AND BRESS
CHARTERED, ITS ATTORNEYS

By: Jay S. Newman
Henry M. Rivera
Jay S. Newman
Suite 800
Connecticut Avenue, NW
Washington, DC 20036
202-637-9000

Dated: June 29, 1994

^{47/} Cf. Exclusivity Order at ¶ 26 which, in the context of an exclusive programming contract, states that "the burden of proof (both the burden of production and persuasion) [is] on the proponent of an exclusive agreement. Given Congress' express desire to foster the development of competition in the market for distribution of video programming, any party seeking a determination that such an agreement meets the statutory public interest standard bears the burden of demonstrating that the proposed exclusivity provides sufficient public interest benefits to outweigh the presumptively anticompetitive effect on competing distributors".

LIBERTY CABLE SAVINGS

BASIC *	1 TV	2 TV's
Liberty Cable	\$12.00	\$12.00
Time Warner	\$23.58	\$27.02
Liberty Savings Per Month	\$11.58	\$15.02
Percent Savings	49%	56%

BASIC + SPORTSCHANNEL	1 TV	2 TV's
Liberty Cable	\$15.00	\$15.00
Time Warner	\$36.53	\$45.47
Liberty Savings Per Month	\$21.53	\$30.47
Percent Savings	59%	67%

BASIC + SPORTSCHANNELS & 1 PREMIUM	1 TV	2 TV's
Liberty Cable	\$27.00	\$37.00
Time Warner	\$45.53	\$54.47
Liberty Savings Per Month	\$18.53	\$17.47
Percent Savings	41%	28%

BASIC + SPORTSCHANNELS & 2 PREMIUMS	1 TV	2 TV's
Liberty Cable	\$35.00	\$45.00
Time Warner	\$53.53	\$62.47
Liberty Savings Per Month	\$18.35	\$17.47
Percent Savings	35%	28%

BASIC + SPORTSCHANNELS & 3 PREMIUMS	1 TV	2 TV's
Liberty Cable	\$39.00	\$49.00
Time Warner	\$60.53	\$69.47
Liberty Savings Per Month	\$21.53	\$20.47
Percent Savings	36%	29%

*Basic service with Liberty Cable includes over 60 cable and broadcast channels, including Bravo. Basic service with Time Warner includes 34 channels; Bravo is sold as a Premium by Time Warner. Each company includes one converter box and one remote in the Basic service charge.

Liberty Cable has several discounted Premium packages offering additional savings of 25% off our already low prices.



PETER O. PRICE
President

May 9, 1994

Ms. Eileen Huggard
Department of Telecommunications
and Energy
City of New York
75 Park Place, 6th Floor
New York, NY 10007

Re: Illegal Conduct by Time Warner Cable of New York City

Dear Ms. Huggard:

I am the President of Liberty Cable Company, Inc. ("Liberty"). I am writing to complain about the harassment by Time Warner Cable of New York City ("Time Warner") of Liberty and Liberty's subscribers at 860 United Nations Plaza and 115 Central Park West. There are many former Time Warner subscribers at these buildings who have been switching to Liberty. Time Warner has been sending letters to these subscribers stating - falsely - that Time Warner will discontinue their billing only after Time Warner has terminated its lines and collected all of its equipment. As you know, the consumer protection standards in Time Warner's franchise expressly provide at Section 9.4 that Time Warner's billing stops no later than three (3) days after Time Warner has received a request for disconnection. Under the franchise, billing ceases upon notice of termination and without reference to when equipment is disconnected or collected.

Furthermore, Time Warner has also been telling Liberty subscribers - falsely - that Liberty technicians may be present at the switch over from Time Warner to Liberty service only for purpose of providing Time Warner technicians access to the subscriber's apartment so that Time Warner technicians can disconnect and collect equipment. As you know, Section 3.3 of the franchise prohibits Time Warner from interfering with the installation and operation of a competing cable television service in New York City. Time Warner's illegal policy interferes with the rights of subscribers - either on their own or through Liberty - to disconnect their own television set from Time Warner's cable so that Liberty's competing service can be connected.

Ms. Eileen Huggard
May 9, 1994
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Liberty has, over the last two years, attempted to gain the cooperation of Time Warner to ensure a smooth switch-over from Time Warner to Liberty service with minimal disruption to subscribers. It would appear that since your department is now without a Commissioner, Time Warner is reverting to its previous bad habits and illegally thwarting the introduction of competition in New York City. Your prompt attention to and intervention in this matter would be greatly appreciated. If you have any questions, please call me.

Sincerely,

LIBERTY CABLE COMPANY, INC.

By


Peter O. Price

cc: R. Aurelio



TIME WARNER
CABLE OF NEW YORK CITY

April 28, 1994

Mr. Love
860 United Nations Plaza
New York, NY 10017
Apt. 21A

Dear Mr. Love:

On April 25, 1994, we received the attached disconnection form from Liberty Cable. You should be aware that this is a form used by Liberty Cable without any authorization from Time Warner Cable of New York City. In order to avoid any confusion, we are writing to remind you of (a) your rights to retain your Time Warner cable television service, and (b) your obligations in the event that you choose to disconnect our service.

It is important for you to understand that it is your legal right to retain your Time Warner service in addition to, or instead of, Liberty's service. We would like to continue to serve you in the future as we continue to provide our customers with the best in cable programming and with the latest in technological innovations.

If you proceed with your disconnection request, you should be aware that your obligations to us cease only after you have notified us of your desire to disconnect, we have terminated our line and collected all of our equipment. It is at this point that you will no longer be a customer and that your monthly billing will stop.

Neither you nor any other third party, including Liberty Cable, is authorized to perform disconnection of our equipment. If you authorize Liberty to act as your agent to arrange for your disconnection, Liberty employees may represent you at your apartment for the sole purpose of providing our technicians access to perform the disconnection and collect our equipment.

Please be assured that if you choose to disconnect your Time Warner service, we will take all steps within our control to ensure that this will be a smooth process.

Sincerely yours,

Alexis Merritt
Coordinator Technical Operations

Enclosure

Time Warner Cable of New York City 130 East 24th Street New York, NY 10010 Tel 212.706.7200
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Signal Reliability: In Manhattan, underground transmission of video signals via fiber and coaxial cable is the optimum method to achieve superior reliability. Microwave transmission, used by Liberty, has a long history of questionable reliability. During recent storms in New York City, entire Liberty buildings were without service for up to three days. During the recent World Trade Center explosion, Liberty customers and non-cable TV homes lost many broadcast signals for the day, while Time Warner Cable of New York City customers benefitted from our direct feed from the networks and received all critical programming.

Experience: Crain's New York Business has noted that Liberty's chairman, Peter Price, "has no experience in cable. His record has been marked with less than stunning successes, including a bumpy tenure at the Post and at The National, the sports daily newspaper that ceased publication in 1991 amid huge losses."

Regulatory Controls: In the same Crain's article, Commissioner William F. Squadron of the New York City Department of Telecommunications and Energy (DTE) warns consumers to be cautious with systems such as Liberty, stating "There is less protection for the consumer since they're unregulated." Time Warner Cable of New York City is a cable television company franchised by the City and State of New York. As such, it is subject to a host of regulations by the City DTE, the State Commission on Cable Television, and the Federal Communications Commission (FCC). Those agencies regulate virtually every aspect of Time Warner Cable of New York City's operation. Liberty, an unfranchised operator, has an FCC microwave license, but is not regulated in any other respect by the FCC or the City or State regulatory agencies. You may be saddled with Liberty service for up to 10 years with no recourse to the cable regulatory agencies.

Programming: Time Warner Cable of New York City offers 57 channels of Standard Plus service, compared to Liberty's 44-channel service. Time Warner Cable of New York City carries many program services not available with Liberty, including New York 1 News— New York City's only all-news television channel, Court TV, Nostalgia Television, Cartoon Network, VISN, The Box, QVC, 9 municipal and public access channels, and 3 Time Warner Home Theatre pay-per-view channels.

Converter Boxes: While Liberty claims that no converter box is needed, those customers who wish to subscribe to HBO or other premium services must have a converter box. Liberty charges \$10 for every additional converter box, while Time Warner Cable of New York City does not charge for the converter for the primary outlet and charges only \$9 for each additional outlet, which includes all premium services ordered on the primary set.

Contract Term and Price: Liberty typically seeks 5 or 10 year contracts and requires the building owners to subscribe to cable service for all building residents. Time Warner Cable of New York City normally charges only residents who want cable service and permits subscribers to cancel whenever they want. Also, Time Warner Cable of New York City offers bulk rates to buildings with 15 or more units. Our bulk rates are very competitive with Liberty's, particularly in view of the greater number of services that we offer.



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CABLE OF NEW YORK CITY

Dedicated to bringing you the best in home entertainment.

Wouldn't you like to tell your cable TV company what you really think of them? Liberty customers did!

"Our conclusion to go with Liberty Cable was based upon the high marks given to Liberty by residents of other buildings who previously converted...we haven't been disappointed. Some residents who used to pay over \$100 per month with Time Warner, cut their bill by more than half."

*Board Vice President
239 East 79th Street*

"Liberty is the best thing that ever happened to us...I am getting a crystal clear picture versus the crummy picture I got with Time Warner. In fact but not least, we are saving a

"I have been extremely happy with the clarity of picture reception and the quality of your service and find that many of my neighbors share that opinion. Without a doubt, Liberty Cable is the superior cable company."

*Resident
150 East 69th Street*

"The changeover from Time Warner to Liberty Cable was completed with expediency, professionalism, and a high degree of personal service. The share-

ings who previously converted...we haven't been disappointed. Some residents who used to pay over \$100 per month with Time Warner, cut their bill by more than half."

Board Vice President
239 East 79th Street

"Liberty is the best thing that ever happened to us...I am getting a crystal clear picture versus the crummy picture I got with Time Warner. Last but not least, we are saving a substantial amount of money using your service."

Board President
160 East 65th Street

"Every promise made has been more than met by your company...I know our shareholders are delighted we made the decision to go with Liberty."

Board President
10 West 66th Street

"The residents of 207 are still "marveling" at how well the installation of the Liberty Cable system was performed...in fact, we'll probably remember December 11 more as the day that "Liberty" took 207 by "storm" rather than the day the "Storm" took New York City."

Board President
207 East 74th Street

"The conversion of cable service at 555 Park from Manhattan Cable to Liberty was accomplished with complete success. Liberty Cable has provided us what you promised."

Board Vice President
555 Park Avenue

many of my neighbors share that opinion. I doubt, Liberty Cable is the superior cable company."

Resident
150 East 69th Street

"The changeover from Time Warner to Liberty Cable was completed with expediency, professionalism, and a high degree of personal service. The shareholders of 80 East End Avenue are delighted with the new service. In fact, I've been spreading the good word about Liberty to all my neighbors!"

Board President
80 East End Avenue

"We are delighted with Liberty service and the quality of the picture. Dealing with Liberty Cable has been a breath of spring compared to the bitter wintry approach of Manhattan Cable."


Board President
60 Sutton Place South

"We love the spirit of competition; you are just that against Paragon, BQ Cable; and Manhattan Cable companies. Our hats off to you for breaking the monopoly."

Resident
1675 York Avenue

"Our reception and the selection of channels available are superior to our previous cable service. I've heard nothing but compliments from shareholders."

Board President
345 East 52nd Street

 **LIBERTY CABLE**
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575 Madison Avenue, New York, New York 10022

LIBERTY CABLE COMPANY, INC.
PARTICIPATION IN FCC CABLE PROCEEDINGS

- ***Cable Must Carry/Retransmission Consent (MM Docket No. 92-259)***
Comments filed 1/4/93

- ***Cable Home Wiring (MM Docket No. 92-260)***
Comments filed 12/1/92
Reply Comments filed 12/15/92
Petition for Reconsideration and Clarification filed 4/1/93

- ***Cable Home Wiring (RM 8380)***
Comments filed 12/21/93

- ***Cable Cross Ownership, etc. (MM Docket No. 92-264)***
Comments filed 2/9/93

- ***Cable Programming Access (MM Docket No. 92-265)***
Comments filed 1/25/93
Reply Comments filed 2/16/93
Opposition to Petitions for Reconsideration by Time Warner and Viacom
International filed 7/14/93
Comments on Petition for Partial Reconsideration by WCA filed 5/24/94

- ***Cable Rate Regulation (MM Docket No. 92-266)***
Comments filed 1/27/93
Reply Comments filed 2/11/93
Opposition to various Petitions for Reconsideration filed 7/21/93

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June 22, 1994

Ms. Eileen Huggard
Department of Telecommunications
and Energy
City of New York
75 Park Place, 6th Floor
New York, NY 10007

Re: Complaint Against Paragon Cable Manhattan

Dear Ms. Huggard:

I represent Liberty Cable Company, Inc. ("Liberty"). I am writing on behalf of Liberty to complain about a violation by Paragon Cable Manhattan ("Paragon") of its New York City Franchise obligations, Executive Law § 828, and the Cable Home Wiring provisions of the Federal Communications Commission, 47 C.F.R. § 76.802. Paragon has been proposing to building owners in its franchise area an illegal Cable Installation Agreement (the "Agreement"), a copy of which is enclosed. The Agreement provides that Paragon will install a conduit system in a new building under construction (the "Conduit System"). The Conduit System will, upon completion, be owned by the building owner and used by Paragon to provide cable television service to building residents. However, Paragon will be the sole and exclusive user of the Conduit System.

The Agreement provides at ¶ 4(b) that "Paragon's right and privilege to utilize, and install equipment or facilities in, the Conduit System, including inside any junction boxes, pull boxes, lock boxes or gem boxes appurtenant to the Conduit System, shall be exclusive, and owner shall not permit any other person to utilize, or install equipment or facilities in or appurtenant to, the Conduit System without Paragon's prior written consent."

The effect of Paragon's exclusive control of the Conduit System is that Liberty and other multichannel video programming distributors ("MVPD's") are precluded from ever providing competing cable television service at buildings subject to the Agreement. A competing MVPD unable to use the Conduit System will have to core drill stairwells and hallways to construct a new and redundant conduit system—a process building owners will not tolerate. Moreover, the expense of a redundant conduit system will make it economically impossible for Liberty or any other MVPD to provide a competing cable television service.

Ms. Eileen Huggard
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The cost of constructing a redundant conduit system can be ameliorated somewhat by the use of hallway molding. However, it has been Liberty's experience that building owners loathe hallway molding and will not, if given the choice, allow its installation. Liberty's experience has been confirmed by numerous co-ops that have vigorously resisted the installation of hallway molding in their buildings by Paragon and Manhattan Cable. See In the Matter of the Application of 86th Street Tenants Corp., Fifty-First Beekman Corp., 19 East 88th Street, Inc., 145 East 84th Street Owners Corp., 650 Park Avenue Corp., 45 East 72nd Street, Inc., Phoenix Owners Corp. and 555 Park Avenue, Inc. v. The New York State Commission on Cable Television, Paragon Cable Manhattan and Time Warner of New York City, New York Supreme Court, New York County, Index No. 105358/93. Unlike Paragon, Liberty is not able to force unwanted hallway molding on a building owner pursuant to Executive Law § 828.

Paragon's exclusive control of the Conduit System violates Executive Law § 828(3) which prohibits the building owner and Paragon from entering into any agreement "that would have the effect, directly or indirectly of diminishing or interfering with existing rights of any tenant or other occupant of such building to use or avail himself of master or individual antenna equipment." The building resident's right to choose his or her own provider of cable television service is paramount under both state and federal law. The Agreement illegally prevents the exercise of the consumer's fundamental right to choose by controlling the conduit through which that choice is exercised.

Paragon tries to justify its exclusive control over the Conduit System by paying for the installation. However, Paragon has a statutory and Franchise obligation to pay for the installation of the Conduit System even in the absence of any exclusive agreement. See Executive Law § 828(1)(a)(ii), and Paragon's Franchise at Section 3. Paragon is specifically barred by Executive Law § 828(1)(b) from receiving or demanding any consideration from a building owner in exchange for installing the Conduit System in the building. Such prohibited consideration includes receiving or demanding the exclusive right to use the Conduit System.

Paragon's exclusive control of the Conduit System precludes building residents from taking advantage of the federal Cable Home Wiring rules in 47 C.F.R. § 76.802. Under the Cable Home Wiring rules, Paragon must, upon the termination of Paragon service, offer to sell its former subscriber sufficient cable within the Conduit System to permit a competing MVPD to provide service. The purpose of this requirement is to promote the

Ms. Eileen Huggard
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introduction of competing cable television service by other MVPD's. See Report and Order, In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 - Cable Home Wiring, MM Docket No. 92-260, FCC 93-73, Adopted February 1, 1993 and Released February 2, 1993.

The effect of Paragon's exclusive control of the Conduit System renders the Cable Home Wiring rules a nullity. A subscriber may, in theory, be able to purchase Paragon's cable in the Conduit System but no other MVPD will be able to connect to that cable because Paragon controls the conduit in which the cable is located. Furthermore, the Agreement expressly provides in § 5 that building residents may not acquire any interest in their Cable Home Wiring and that Paragon can remove Cable Home Wiring from the building upon the termination of service.

The Agreement violates Appendix B, § I(B)(2) of the Franchise which provides "the installation of all cables, wires, or other component parts of the system in any structure will be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with such other system." (emphasis added) This provision expressly prohibits Paragon from interfering with the shared use of conduits by competing MVPD's.

Paragon's New York City Franchise requires at § 3.2.01 that Paragon "shall [not] discriminat[e], nor permit discrimination between or among any persons, in the availability of services or the rates, terms and conditions thereof." The Agreement discriminates between different building owners and for that reason alone is illegal. The Agreement is a radical departure from Paragon's past installation practices at new buildings under construction. Paragon has not claimed the exclusive right to use conduit systems in new buildings constructed during the 1980's. A careful investigation and examination of Paragon's installation and construction practices—both past and present—will show that the Agreement is discriminatory in violation of § 3.2.01 of the Franchise.

The Agreement violates § 3.3 of the Franchise which provides that Paragon "shall not interfere in any way with, or utilize, any master antenna systems, satellite master antenna system, or any other similar system within any building." Paragon's exclusive control of the Conduit System precludes the installation of competing MVPD systems. Indeed, it was clearly intended to achieve precisely that end. If Paragon were truly

Ms. Eileen Huggard
June 22, 1994
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concerned about interference with its equipment by other users of the Conduit System, it could simply install larger conduit.

The Agreement violates § 8.3 of the Franchise which provides that Paragon "shall not interfere with the ability of each subscriber to utilize his or her television receiver for any normal purpose." In light of the Cable Home Wiring rules, the "normal purpose" of subscribers' television receivers now extends to interconnecting with competing MVPD's. That normal purpose is frustrated by Paragon's exclusive control of the Conduit System.

Liberty respectfully requests that your office investigate the use of the Agreement by Paragon and order the following remedial action: (1) direct Paragon to immediately cease using the Agreement; (2) nullify any executed Agreements, (3) require Paragon to install conduit and appurtenant hardware (e.g. lock boxes) only on a non-exclusive basis and of sufficient size and diameter to accommodate the installation of cable, splitters and associated hardware by at least two (2) other MVPD's and to notify your office and Liberty of such installations at least ninety (90) days in advance. Your prompt attention to this matter and cooperation is appreciated.

Sincerely,



W. James MacNaughton

WJM:lw

Enclosure

cc: John Rigsby, President, Paragon Cable Manhattan
William Finneran, Chairman
New York State Commission on Cable Television
Oliver Koppel, Esq.
New York Attorney General
The Hon. Rudolph Guiliani, Mayor
The Hon. Ruth Messinger, Manhattan Borough President
Susan Kassapian, Esq., Assistant Commissioner
Department of Consumer Affairs

bcc: P. Price
H. Milstein
L. Constantine
J. Oppenheim
A. Berkman

ENCLOSURE OMITTED



575 Madison Avenue, New York, New York 10022
(212) 891-7777 Fax (212) 891-7214

January 29, 1993

The Hon. William F. Squadron
Commissioner
The City of New York
Department of Telecommunications
and Energy
75 Park Place, 6th Floor
New York, NY 10007

Re: Illegal Franchise Amendments

Dear Commissioner Squadron:

As you know, the Time Warner, Inc. cable companies for Manhattan, Time Warner Cable of New York City and Paragon Cable Manhattan ("Time Warner"), are required under their franchises to place their cable in publicly accessible areas of residential buildings. The Department of Telecommunications and Energy (the "Department") is on record as construing this requirement to mean that Time Warner must place its cables in the hallways of each building in Manhattan without regard to whether any building resident actually requests Time Warner service (the "Hallway Wiring Requirement").

It has come to our attention that the Department is now entertaining ad hoc requests for the waiver of the Hallway Wiring Requirement in conjunction with the sale of bulk rate cable television service by Time Warner. Enclosed please find a letter dated January 14, 1993 from Time Warner to the board president of a co-op offering to "diligently pursue" the Department's waiver of the Hallway Wiring Requirement for its bulk rate customers.



As you know, Liberty has installed its cable in the concealed conduits of many buildings in Manhattan. These installations were made on the assumption that Time Warner would install its equipment in the hallways of the building as required by the franchise. These separate installations assure that there is no interferences between Liberty and Time Warner operations and to provide customers a choice of service.

The waiver of the Hallway Wiring Requirements will apparently allow Time Warner to install its cable in concealed conduits which are or may be occupied by Liberty. This will increase the prospect for physical interference and conflict between Time Warner and Liberty and in some cases foreclose access and preclude choice of services.

Time Warner continues to flagrantly ignore its franchise obligations strenuously negotiated by the City to insure proper service and discourage anti-competitive acts. Your department must take immediate action to enforce the franchise and cease collaborating with Time Warner to permit their evading its terms.

Sincerely,

LIBERTY CABLE COMPANY, INC.


By 
Peter O. Price
President

cc: R. Aurelio - President,
Time Warner NYC Cable Group
The Hon. William Pinneran - Chairman,
New York State Commission on
Cable Television



**TIME WARNER
CABLE OF NEW YORK CITY**

January 14, 1993

Mr. Sheldon Frankel
Board President
345 East 69 Street Apt. #6C
New York, NY 10021

Re: 345 East 69 Street / Block #1444

Dear Mr. Frankel:

A previous inspection of the existing cable television system at 345 East 69 Street revealed that it has deteriorated and is in need of immediate maintenance and repair. We would, therefore, like to take immediate steps to correct these problems and, in that process, provide our new expanded service. Enclosed please find a survey which details this conduit work.

In addition, we will submit, and diligently pursue, a request for a waiver of the New York City accessible wiring requirements so that we can continue to provide cable service through the conduit system. We will need your assistance in this endeavor. Specifically, we will ask that you submit to us a written request for the exemption. In that request, it is recommended that you provide the City with assurance that Time Warner Cable of New York City ("TWCNYC") will have access necessary to provide prompt and efficient service to our customers. Also, feel free to include any other reasons that you feel the waiver is warranted. We will then submit our petition, incorporating your written request, together with a description of the proposed wiring method.

In order for us to begin the work described in the attached survey, we will need your assistance to arrange access into each unit of the building in accordance with a pre-arranged schedule. Finally, it should be understood that this system is the sole property of TWCNYC. Thus, we need assurances that the building will not interfere with, nor authorize third parties to utilize any part of, TWCNYC's cable and equipment.